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## THE RIGHT TO PROPERTY.

FRANK SARGENT HOFFMAN.

THE moment we begin to reflect on the matter we cannot help seeing that the right to property is one of the most sacred rights of man. We cannot imagine a people so degraded as to be entirely devoid of the idea of property, and no community has ever enjoyed prosperity or attained a high degree of culture where the idea was held in slight esteem. Indeed, we may justly measure the progress of a people in civilization and true worth by the clearness with which they apprehend this idea and the completeness with which they apply it to the ownership and use of every commodity that ministers to human need.

But sacred as this right is, we greatly err if we suppose that the ground of the right to property is first possession. No man gains a just title to a thing simply because he came upon it before some one else. If a person to-day should discover a new island in the Pacific he would not for that reason have a right to undisputed possession. Suppose a band of shipwrecked sailors should be cast upon its shores. He could not justly claim that the fruits and springs and other means of subsistence he found there were exclusively his. The new world was not the property of Columbus because he discovered it, nor did it belong exclusively to the scattered bands of savages that occasionally roamed over its surface. Possession and use of a thing can never be an ultimate ground of ownership. Something else must come in to determine whether or not that possession be just.

We should equally err in maintaining that the right to property is founded upon a decree of the government. "Property and laws," says Bentham, "were born together, and will die together." The same erroneous view is advocated by Montesquieu. In speaking of the way

men have come to adopt a civilized mode of life he says, "The political laws gave them liberty; the civil laws, property." A natural consequence of this doctrine is that what the statute could make it could at any time unmake. It necessitates the view that there is no ground for the right to property back of the decrees of the government. If this were true justice would have no place in determining the possession and use of property. All would be settled by an arbitrary fiat. The most industrious would have no more of a claim upon property as a reward for their industry than the most indolent. The governors might at any time decree that all property should belong to themselves alone, and no voice could justly be raised to call the act in question.

Nor is the real ground of property its utility. True, no community could exist without property. True, no community has been able to thrive without individual property. But that only shows us a result of property, not its ground. All we can claim from the standpoint of utility is that the excellent effects of property corroborate the rightfulness of its possession and use.

The primary and distinctive ground of property is labor. Property may be defined as the fruit of human labor. If there were no men in the world, there would be no property. Man alone is the creator of all property. Before him there was scarcely anything but matter. By his labor he imparts an interchangeable value to things, and this is the beginning of his progress. Man is capable of civilization because he can produce wealth. Other animals are swifter in the chase, better protected from the cold and better armed for strife. But they cannot produce property and therefore cannot advance beyond a certain fixed limit. They can be property, but not the owners and controllers of property. Man, however, because he is active, intelligent and free; because he is a person, can so impress his personality on the objects of nature about him by his labor as to acquire a just title to property. In a highly civilized community there is

scarcely a clod of earth or a leaf that does not bear that impress.

Thus we see that the maxim, "To the doer belongs his deed," is as true of property as of morals. Whatever a man produces by his own powers is ethically his, and his claim to ownership should be respected against all comers. His natural right to anything comes from the labor he has expended upon it, and is determined by the extent of that labor. Whatever laws the civil power may make concerning the possession and use of property it can never justly ignore this right and treat it as though it did not exist, any more than it can justly ignore any other natural right.

But a matter of supreme importance to a thorough treatment of our subject is the fact that a natural right is not of necessity an ultimate right. The natural right to property, like the natural right to "life, liberty and the pursuit of happiness," is never an absolute right. These rights one and all may justly be sacrificed in case the needs of the community require it. If a man's life and liberty are at the disposal of the body-politic, how much more is his property? The true state is an organism and individuals are the members of that organism. The state is the unit, the individual a fraction of that unit. The well-being of the organism as a whole is the thing of greatest moment, and should be the point of view from which to treat the various parts. In the normal condition of affairs the lungs and the heart are best developed by developing the whole body. Every human being finds his true place in the body-politic and the true sphere for the exercise of his natural rights only in his connection with his fellows in their corporate capacity as a state.

The natural right to property therefore is ultimately resolvable into a state right. The people, as an organic brotherhood, are to decide what disposition is to be made of all property. While the good of the individual and the preservation of his right to the products of his labor are of great importance, the welfare of the brotherhood

as a whole is of far more importance, and should be the point of view from which the laws controlling the possession and use of property are finally determined. The good of the brotherhood as a whole is rarely in collision with the best interests of its individual members. The laws of property that a state enacts will seldom need to set aside the natural right to property, but will almost always confirm and strengthen that right. But whatever the laws may be, they should never fail to be founded upon and to accord with the following fundamental maxims:

1. The supreme ownership of all the natural sources of property is with the body politic. The land, the water and the air and all that they contain are the common possession of the race. They are under the supreme control of the whole people in their organic capacity as a state. Inasmuch as the support of every man is derived from the soil, the very existence of the state would be imperiled if the supreme ownership of the soil were not vested in the state itself. That the community, and not the individual members of the community, originally owned the land is one of the best attested facts of history.

Indeed, no state has ever given up that ownership. It has only allowed individuals under certain conditions and limitations to possess and use its territory. If a state should unconditionally give up its control it would thereby cease to be a state. Its sovereignty would be gone. It would lose the very thing that makes it a state, and instead of one state, as many states as there were individuals would suddenly spring into being.

If a state at any time adopts this system of individual control of its territory, the titles to the land are derived from the state, and each citizen holds his land ever subject to the control of the state. Whenever the land of the community gets into the hands of the few to the exclusion and injury of the many, or whenever the good of the state for any reason requires it, these titles may justly be revoked and individual control abolished. The

state is constantly doing it in the exercise of the right of *eminent domain*, and never was doing it to such an extent as at present. We have every reason to expect that as the needs of intercommunication increase and the people become better acquainted with the many injurious effects of the present system, individual ownership will be much further limited. It is vain to argue that any system of land tenure is of necessity the best system. The state should change its system with the needs of the people and keep it as nearly as possible in harmony with those needs.

2. The state has the ultimate control of and responsibility for the methods of acquiring property. If the sources of property are under the supreme control of the state it is easy to see that all property derived from those sources should be under its control also. No individual can justly take any of the materials of wealth without the consent of the state and by his labor make them his property; and the state can never rightly give this consent except with the limitation that the ultimate ownership and control of all property is with itself. While the state, therefore, fully recognizes the natural right to property that comes from labor, it cannot regard this right as absolute, but must itself determine in what way and by what means property is to be acquired. It must prescribe the legitimate spheres of labor and check the useless and wicked expenditure of labor. It should prevent by every means in its power the acquisition of property by trickery, by chance, by counterfeiting, by combining to force up prices without increasing values and by immoral practices of every sort.

Any system of acquiring property not based on labor cannot contribute to the well-being of man. For the only thing that is worthy of reward is work. It is a sound principle of statecraft as well as of morality that he who will not work shall not eat. As President Hyde has well said in his excellent little book on "Practical Ethics," "An able-bodied man who does not contribute to the world

at least as much as he takes out of it is a beggar and a thief." The fact that the government of a state has adopted in one set of circumstances certain regulations for the individual accumulation of property and has found them to contribute to the general welfare, is no sufficient reason why they should be continued at another time under a different set of circumstances. When a country is new with much to be done and few to do it, laws concerning the accumulation of property may with reason greatly vary from what they should be in a country where the conditions are just the opposite.

3. But the body politic is not merely the supreme power for determining the ways in which property can be acquired. It is also the supreme authority for determining how it should be used after it is acquired. No individual member of the state has a right to use his property simply as he pleases. If he pleases to use it for the injury of the state, to degrade and demoralize his fellows, the state should put a limit upon his use and, if necessary, deprive him of it altogether. The principle of confiscation is a clear recognition of this right. All nations agree that if a citizen uses his property to abet the enemy in time of war, he has violated the first principles of government. He has by this act cut himself off from his normal relation to the community and deprived himself of the advantage that before belonged to him as a member of that community. The original condition upon which the state allowed him the control of his property has disappeared and his individual right to the use of it has disappeared also.

Any crime of any character constitutes a sufficient reason for the state to limit the use of property, and the more serious the crime the greater may be that limitation. Incurrible criminals of every description should not be allowed in any degree the free use of property; for they constantly show by their repeated acts of lawlessness their unworthiness of such a trust. Property that is devoted to a good end and is accomplishing a worthy

purpose in one generation may not do so in another. The state, therefore, should never allow property to be devoted for an unlimited period to the promotion of any enterprise. At any time when the state discovers that the welfare of the people is not furthered by such an enterprise, it should see to it that the property that supports it is devoted to some other end that does promote that welfare.

The doctrine of the inviolability of vested rights rests on a false conception of the right to property, and before the true conception has no foundation whatever. The true state will never allow any individual, or collection of individuals, to hold and use property any longer than such holding contributes to the common good. The moment it ceases to do so that moment the vested right becomes violable. The government of one generation can never unalterably bind a future generation as to its use of property. It can never grant a franchise for the use of property that a future generation cannot annul, or make a contract that a future generation cannot break. The word "forever" in any document concerning the possession and use of property is a pure fiction. The sooner it is read out of court the better.

The fact that a government has once allowed corporations to be formed for the investment and use of property, is no reason why they should be continued in existence when they cease to promote the public welfare. It is not only the right but the duty of the state to legislate them out of existence when it becomes clear that some other method of holding and using property will better further the well-being of the people. The laws concerning the use of property are just as subject to change as those concerning the acquisition of property, and it is the duty of the state through its government to have them changed whenever it is evident that the good of the organism as a whole requires it.

4. What we have said concerning the accumulation and use of property is equally true of the transfer and descent



of property. Here also the state has the ultimate and supreme control. For there is no way of making property contribute to the welfare of the community as a whole, or of its individual members, unless the state has the right to determine what power of transfer the holder shall have as between himself and his contemporaries, and how far his acts shall control the use made of his property by the generations that follow him. All contracts, bequests, deeds of sale, wills and the like must therefore be subject to the authority of the state, and if made without that authority must be regarded as having no binding force.

To what extent a dead hand should be allowed to hold property or a dead brain to control it is in our day a serious question. It is perfectly clear that no such bequests of property should stand if they plainly interfere with the progress of humanity. But if the state sees fit to grant the privilege on the ground that labor will be more effectually stimulated thereby, it should at least be a limited privilege. For no man can possibly foresee what will be the need of all coming generations, and thus he cannot in any sense possess a right to say what disposition shall be made of what was once his property to supply that need.

The superstitious reverence that many still have for the dead hand and brain would disappear in the light of a true conception of the sacredness of contract. Living beings alone can make contracts. A dead person cannot make a contract with a living one, or a live person with a dead one. A father while living cannot make a binding contract for his own children even after a certain period. Honor and reverence are due to all the worthy who have preceded us, but these things can never rightly be made a matter of contract. The wealth of the past would be of comparatively little value if we did not constantly renew it. There can be no moral obligation therefore upon the state to have property descend exactly as the fathers desire. The wealth of any generation is to be

used preëminently for the good of that generation, to supply present needs, to establish and maintain the ideas of the present, not to keep alive and extend the exploded notions of the past.

Many of the conditions attached to bequests under our present system are frequently more honored in the breach than in the observance. Clauses in wills are often justly declared null and void by the courts because they require the legatee to do something that is counter to "public policy." The state has not only the right but the duty to assume the full control of the bequests and legacies of any institution that has outgrown its usefulness, as well as one that is supporting practices or promulgating doctrines that are injurious to the public good. It should devote them to some other purpose that meets the needs of the present and advances the civilization of man.

Under our present conditions an inheritance tax righteously administered may reasonably be expected to afford us a measure of relief. The state should never do anything to deaden the enterprise of its citizens, but should encourage in every way the discovery of new and easier methods of providing for the needs both of mind and body. But when for any reason the wealth of the community has become concentrated into the hands of a few, injury to the public well-being of the most disastrous character is almost sure to follow.

No tyranny is so dangerous to public life and morals as the tyranny of money. For there will be little virtue left in a people whose actions are determined for them by dollars and cents. One of the imperative needs of our time is an effectual check upon the amazingly skillful and elaborate devices now so common of getting possession of the property of the country without rendering an equivalent. There is every reason to suppose that a limit upon the power of inheritance will be such a check. The government, being finite, may often be unable to discover to what extent an individual has brought under his control the property of the country. At his death this is far

less difficult. If the courts were empowered to assess and collect an inheritance tax graduated in amount according to the needs and conditions of the legatees, the evil effects of vast fortunes continuing in the hands of single individuals would be largely mitigated.

We should greatly err in our conception of this matter of a tax on large inheritances if we thought it collided with all inheritance. It is only an attempt to discriminate between just inheritance and unjust. There is nothing in this position that needs to antagonize the views so well expressed by Charles Comte, who in combating the extreme opinions of some of his contemporaries on this subject that no inheritance is justifiable, says: "If I wished to refute the errors borrowed from the Abbé Raynal, concerning the right of children to enjoy the goods left by their parents when dying, I could not help calling attention to the fact that the family spirit is one of the principal causes of the production and preservation of wealth; that a man, to insure his children a living, performs labor and undergoes privation, to which no other consideration would induce him to submit. I would point out to my readers that if the wealth of a man were not to pass to his descendants . . . he could derive scarcely any real advantage from his property, even during his lifetime. I would show to them, finally, that a nation in which children were excluded from succeeding to their parents would, in a very few years, fall a great deal lower than the inhabitants of Egypt under the domination of the Mamelukes, or the Greeks under the domination of the Turks."

We may give full consideration to these views and still hold that under certain conditions a limitation should be put upon the inheritance of these "goods," and that the case of vast fortunes is one of those conditions. In the United States the laws of the several commonwealths in almost every instance already forbid the willing of property beyond two generations. Still greater limitations under the present circumstances would undoubtedly

impede the development of a plutocracy and conserve the general good. A large inheritance tax on all sums over a certain maximum descending to a single individual and a gradually diminishing tax on all sums down to a certain minimum, as the circumstances and needs of the legatees shall warrant, would do much toward mitigating the gross injustice in the distribution of property nowhere more strikingly and painfully apparent than in those countries where wealth most abounds. For, as another so truthfully expresses it, "Every workman must be constantly reminded of the fact that while numbers are unable to obtain a sufficiency of the necessities of life, others have so much superfluous wealth that they are able to squander it in useless and mischievous luxuries and never devote themselves to one hour of useful employment."

As matters now are the time ought not to be far distant when our national revenues should chiefly be derived from inherited wealth. Those who have been allowed to get possession of the property of the country should at least pay the taxes of the country. Unjust taxation is one of the chief evils of our time. The rich can, and generally do, escape their share of the burden. Under our present system it is such an easy thing for rich men to evade the payment of taxes that even the best of them can hardly resist the temptation. The poor man with just money enough to own his home can conceal nothing, and has no palace in the country where, for the purposes of taxation, he can take up his legal residence.

The present system is so manifestly vicious and leads to such a marked oppression of the poor that every voice in favor of the righteous use of property should be raised against it. Lord Asquith's plan of mitigating the social evils of England at the expense of inherited wealth should have the hearty support of every right-minded man in the kingdom, and should be copied in every other land.

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